HIGH COURT OF ORISSA
CUTTACK

CRIMINAL APPEAL NO. 42 OF 1990

From the judgment dated 07.02.1990 passed by Sri M.R. Behera, Addl. Sessions Judge, Jajpur in S.T. No.17/1 of 1989.

Abhimanyu Mohapatra ..... Appellant

Versus

State ..... Respondent

For appellant : M/s S.K. Nayak-3, R.K. Dash,
S.K. Nayak & A. Mohanty.

For respondent : Mr. S. Behera,
Addl. Govt. Advocate

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 11.07.2007

PRADIP MOHANTY,J. This appeal is directed against the judgment and order dated 07.02.1990 passed by the Addl. Sessions Judge, Jajpur. By the impugned order, the trial court convicted the appellant under Sections 498-A and 306 IPC and sentenced him to undergo rigorous imprisonment for seven years and pay a fine of rupees three thousand, in default to undergo rigorous imprisonment for three months, under Section 306 IPC. It, however, imposed no separate sentence for the offence under Section 498-A IPC.

2. The case of the prosecution is that on 25.06.1982 the deceased married to co-accused Bhagabat Mohapatra (since acquitted), the

son of the present appellant. There was demand of cash of Rs.10,000/- and 7 tolas of gold at the time of marriage negotiation. But cash of Rs.6,000/- and 5 tolas of gold along with other moveable articles like utensils, etc., were given at the time of marriage by the informant. Six months after the marriage, the appellant went to the bank with the gold ornaments to fetch some loan but could not procure his intended loan for which he formed an opinion within himself that the gold ornaments were spurious. After returning from the bank, he started abusing the deceased and her father, the informant (P.W.1), for giving spurious gold ornaments and subjected the deceased to cruelty. On one occasion, in the year 1983, the informant had sent two "SADABHARAS" anticipating the delivery of the deceased, according to the custom. But the present appellant did not accept the same in spite of request of the deceased; rather, on the other hand, the appellant told the deceased that if she so liked, she could go to her parent's house and his son would marry once again. The appellant also returned the gold ornaments of the deceased through the brother of the deceased with a direction to get the same remade by pure gold and to make arrangements to give the balance cash amount settled at the marriage negotiation, failing which, the deceased would be affected. Deceased gave birth to a female child, the information of which was not communicated to the family of the informant immediately but was lately communicated by co-accused Bhagat. The deceased even was not allowed to go to her father's house to attend the obsequies of the informant's grandfather. In the year 1985, the marriage of the informant's sister was solemnized. The father of the informant had brought the deceased giving an undertaking to the appellant that the ornaments would be given along with the balance cash amount. The deceased was taken to Keonjhar where the informant was serving. There, the deceased delivered her 2nd issue, a son. The husband of the deceased went to Keonjhar, tested the ornaments there, took Rs.2500/- and proposed to take back the deceased to his house. Accordingly, the deceased was taken from Keonjhar to her in-laws' house by her brother. The old

ornaments along with some new ornaments like two chains, one for the deceased and the other for her son, were also given. But the appellant could not believe the quality of the gold, suspected some foul play by informant and expressed that the informant has relationship with the goldsmith. The living condition of the deceased at her matrimonial home did not improve. On 01.04.1987, the brother of the informant Pradip got the news of death of the deceased and rushed to the informant. The informant rushed from Keonjhar, saw the dead body of the deceased and suspected that she might have been killed for non-fulfillment of dowry. On 25.04.1987, he presented a written report before the Superintendent of Police (Rural), Cuttack, who directed investigation into the case, on closure of which charge sheet was submitted under Sections 306/498-A IPC.

3. The plea of the accused persons was complete denial of the allegation. It was further pleaded by them that the deceased was leading a normal matrimonial life and she died a natural death. Initially, an U.D. Case was registered, but it was turned to one under Sections 306/498-A IPC after receipt of the written FIR from the father of the deceased, P.W.1.

4. In order to prove its case, the prosecution examined as many as eight witnesses including the doctor and the I.O. The defence examined two witnesses to substantiate its plea.

5. The learned Addl. Sessions Judge, Jajpur, who tried the case, by his judgment dated 07.02.1990 convicted the appellant under Sections 306/498-A IPC and imposed sentence as already indicated. It, however, acquitted the co-accused Bhagabat Mohapatra, the husband of the deceased, of the above offences with the finding that none of the charges had been proved against him.

6. Mr. Dash, learned counsel for the appellant, submits that there is no material on record to prove a case under sections 498-A and 306 IPC against the appellant and the prosecution has failed to prove the ingredients of the above offences. Nothing has been proved by the prosecution with regard to demand of dowry by the appellant. P.W.1, father

of the deceased, and P.W.4, one of the relations of the deceased, are interested witnesses and there is no independent corroboration to their version. Therefore, their evidence cannot be believed. There is also no specific evidence that the deceased was subjected to cruelty by the appellant just before her death.

7. Mr. S. Behera, learned Addl. Government Advocate vehemently contends that the appellant has been rightly convicted under Sections 306/498-A IPC. He further submits that the marriage was solemnized on 25.06.1982 and the death occurred on 01.04.1987, i.e., within seven years of the marriage. Onus heavily lies on the defence to prove that the death occurred under normal circumstances.

8. Perused the LCR. P.W.1 is the informant and the father of the deceased. He specifically stated about the demand of dowry and torture by the present appellant. He has stated that the present appellant wanted to pledge the gold ornaments of the deceased in the bank but the bank could not advance loan on the ground that the gold ornaments were spurious in nature. After returning from the bank, he scolded the deceased. He also abused the deceased very often repeating the same words as 'cheater'. The present appellant also did not receive the "SADABHARAS". In July, 1984, the present appellant refused to allow the son of the informant (brother of the deceased) to enter his house and abused him about the gold ornaments. In the year 1984, the present appellant refused to send the deceased to her parental house to attend the "Sudhi" ceremony of informant's grandfather. Nothing has been elicited from this witness during cross-examination to discredit his evidence. P.W.4 is one of the relations of P.W.1. He stated about the demand of dowry by the present appellant and harassment by the present appellant to the deceased. Nothing has been brought out from him by the defence to disbelieve the testimony of this witness. P.Ws.2, 3 and 5 have turned hostile.

9. In the entire evidence, there is no whisper that the harassment or cruelty faced by the deceased led her to commit suicide. In

order to establish the offence under Section 306 IPC, the onus is on the prosecution to prove that the deceased had committed suicide and the appellant had abated the commission of such offence. There is no evidence on record that immediately before her death, there was any cruelty meted out to her by the accused-appellant, which led her to commit suicide. There is also no evidence that the appellant instigated the deceased to commit suicide. There is also no material that any terror was created by the appellant in the mind of the deceased to push the deceased to take the extreme step. But, the conduct of the appellant shows that he treated the deceased cruelly because of non-fulfillment of demand of dowry. The cruelty may be mental, physical, intentional or unintentional. Here, the evidence of P.Ws.1 and 4 is clear that the present appellant subjected the deceased to mental torture on account of non-fulfillment of demand of dowry.

10. In view of the above analysis, this Court is of the opinion that the appellant has rightly been convicted under Section 498-A IPC. But, so far as his conviction under section 306 IPC is concerned, this Court feels inclined to set aside the same, as there is no material on record to substantiate the said charge. Therefore, this Court acquits the appellant of the charge under Section 306 IPC.

11. In the result, this appeal is allowed in part. The conviction and sentence of the appellant under section 306 IPC are set aside and he is acquitted of the said charge. However, his conviction under section 498-A IPC is confirmed. He is sentenced to the period of imprisonment already undergone and pay a fine of Rs.10,000/- (ten thousand), in default to undergo rigorous imprisonment for six months.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
July 11, 2007/ ***Samal***